IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 6TH NOVEMBER 2006 / 15TH KARTHIKA 1928

WP(C).No. 23002 of 2006(L)

OPEA.34/2005 of MUNSIFF COURT,CHAVAKKAD

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PETITIONER:

NIRMALA KERALAN, W/O.KERALAN,
AGED 53 YEARS, MUNDANTHARA HOUSE, THAIKKAD VILLAGE
TRICHUR.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENTS:

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1. JOY CHERIYAN, S/O.CHERIYAN,
CHAKRANIL HOUSE, NENMINI DESOM, THAIKKAD VILLAGE,
THRISSUR.

2. SPECIAL TAHSILDAR,
LAND ACQUISITION, GURUVAYOOR DEVASWOM,
(RETURNING OFFICER).

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE ORIGINAL PETITION (ELE.) 34/05 FILED BEFORE MUNSIFF COURT, CHAVAKKAD.

EXT.P2: TRUE COPY OF ORDER IN O.P.(ELE) 34/05 DTD. 3.8.06 OF MUNSIFF COURT, CHAVAKKAD.

RESPONDENTS EXHIBITS

EXT.R1(a): TRUE COPY OF THE I.A.NO.2346/06 IN E.O.P.NO.34/05 DATED 18.7.06 PREFERRED BY THE PETITIONER FOR AMENDMENT OF E.O.P.

EXT.R1(b): TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THIS RESPONDENT ON 17.7.06.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.23002 OF 2006

DATED THIS THE 6th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioner was one of the members of Thaikkad panchayat Committee. Respondent was elected as the President of the Panchayat in the election conducted on 16.10.05. Ext.P1 election petition was filed before Munsiff Court, Chavakkad under Section 153(14)of Kerala Panchayat Raj Act (hereinafter referred to as the Act). The reliefs sought for are 1) call for the vote cast by L.D.F. Member Shri. Suresh in the president election and to declare that vote valid. 2) To declare that the election conducted for the presidential ship on 6.10.05 is invalid.

2. The case of petitioner was that the vote cast by another member Shri. C.V. Suresh a member of the Panchayat Committee in the election of the President was illegally declared invalid and as a result respondent was declared elected and hence the election of respondent is invalid. An objection was filed by respondent contending that the election petition is not maintainable as the other candidate for the presidential ship was not made a party to

the petition and the pleadings regarding corrupt practice as provided under Section 120 (8) of the Act is insufficient and therefore the election petition is not maintainable.

3. As per Ext.P2 order, learned Munsiff dismissed the election petition on preliminary grounds holding that the election is not maintainable. The finding of learned Munsiff in Ext.P2 order is that the allegation raised in the petition is an allegation regarding corrupt practice and it does not contain the details as provided under Section 120 (8) of the Act and petitioner did not implead the defeated candidate in the election and therefore the petition is not maintainable. Petitioner is challenging that order in this petition filed under Article 227 of Constitution of India contending that learned Munsiff has no jurisdiction to dismiss the petition filed under Section 153(14) on the grounds provided under Section 93 (1) of the Act and under Section 153(15), every petition filed under Sub Section 14 shall be disposed of in accordance with the procedure laid down in the Code of Civil Procedure while trying a suit and even if there is any defect of want of non-joinder of necessary parties, petitioner is to be afforded opportunity to implead the necessary party and petition cannot be dismissed on

preliminary ground. It was also contended that an election petition filed under Section 153 (14)included under Chapter XIV could not have been dismissed as provided under Section 93(1) which comes under Chapter X and it confines only to an election of a member of the Panchayat as is clear from the definition of election provided under Sub Section (xiv) of Section 2 of the Act and therefore the impugned order is unsustainable.

4. Learned Counsel appearing for petitioner pointed out that under Section 2(xiv) an election is defined as 'an election to fill a seat in any of the constituencies in a Panchayat at any level' and under Section 2 (vii) 'constituency' has been defined as the territorial area (by whatever name called) for the purpose of election of a member to a Panchayat at any level and Chapter X of the Act deals with disputes regarding an election as defined under Section 2(xiv) and therefore neither Section 93 nor Section 120 nor Section 89 nor 90 nor 91 is applicable to an election petition filed under Sub Section 14 of Section 153 and therefore the impugned order is to be set aside on that sole ground.

5. Learned Counsel appearing for respondent argued that the election petition was not properly verified as

provided under Code of Civil Procedure and provisions of Section 89, 90 and 91 were not complied with and an affidavit in form 28 as provided under Rule 66 of conduct of Election Rules was not filed. An application to amend the verification of the election petition was pending before the Court below and in such circumstances, dismissal of the petition is perfectly correct. It was also argued that learned Munsiff is competent to dismiss an election petition as the election petition did not comply with the mandatory procedures provided under the Act.

6. Election has been defined in Section 2(xiv) as follows:

> "(xiv)'elelction' means an election to fill a seat in any of the constituencies in a Panchayat at any level"

7. Constituency has been defined in Section 2(vii) as follows:

> "(vii) 'Constituency' means the territorial area (by whatever name called) for the purpose of election of a member to Panchayat at any level"

8. Chapter X deals with disputes regarding election. That election could only be the election as defined under Section 2(xiv) of the Act. If so it could only be the election of a member of the Panchayat, Section 87 provides that no election shall be called in

question except by an election petition. That election could only the election of member as defined under Section 2(xiv) of the Act. Similarly, Section 88 provides the Court competent to try such an election petitions and Section 89 provides how to present that election petition and Section 90 provides who are all to be joined as parties to an election petition and Section 91 the contents of an election petition and Section 94 the procedure to be followed by the Court while trying an election petition. All these provisions are applicable in respect of an election petition challenging an election of a member to the Panchayat.

9. Section 102 provides the grounds on which an election to the Panchayat could be challenged under Sub Clause (ii) of Clause b of Sub Section 1 of Section 102 any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent is a ground for declaring the election to be void. Chapter XI deals with corrupt practices and Section 120 defines what are all deemed to be corrupt practices for the purpose of this Act. Section 91(b) of the Act provides that an election petition shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the

names of the parties alleged to have committed such corrupt practice including the date and place of commission of such practice . Rule 62 of Kerala Panchayat Raj (conduct of election) Rules provides that the affidavit referred to in Section 91(1) of the Act shall be in Form 28 and shall be sworn before a Magistrate of the first class or a Notary. But all these provisions apply to an election petition as defined under Section 2(vii) of the Act challenging the election of the member of the Panchayat and not the election of the President.

10. Chapter XIV deals with provision relating to members and President of Panchayat. Section 153 provides the election of President and Vice President. Sub Section 14 provides that where a dispute arises as to the validity of an election of President or Vice-President of a Panchayat, any member of the Panchayat can file a petition questioning the validity of the election. Sub Section 14 reads as follows:

> "(14) Where a dispute arises as to the valididty of an election of President or Vice-President of a Panchayat, any member of that Panchayat may file a petition,-
> (a) in the case of Village Panchayat, before the Munsiff Court having jurisdiction over the area in which its

> headquarters is situated.
> (b) in the case of Block Panchayat or District Panchyat, before the District Court having jurisdiction over the area in which its headquarters is situated, for decisin and such decision shall be final."

11. Sub Section 15 deals with the procedure for the trial of a petition filed under Sub section 14 challenging the election of the president or Vice-President of a Panchayat.

Sub Section 15 reads as follows:

> " (15)Every petition (referred to in sub-section (14) shall be disposed of in accordance with the procedure laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying suit."

Section 94 of the Act deals with the procedure to be followed by the Court while trying an election petition challenging the election of a member of the Panchayat as provided under Section 89 .

Section 94 reads as follows:

> "Procedure before the Court.-
> (1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908(Central Act 5 of 1908) to the trial suits:

> Provided that the Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so in frivolous ground or with a view to delay the proceedings.
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> (2) The provisions of the Indian Evidence Act, 1872 (Central Act of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of any election petition."

it is clear that as against the provisions provided under Chapter X, an election petition filed as contemplated under Sub Section 14 of Section 153, has to be disposed of in accordance with the procedure laid down in the Code of Civil Procedure while trying a suit and not as provided under Section 94 of the Act. A petition filed under Sub Section 14 of Section 153 of the Act cannot be dismissed on the preliminary ground as provided under Section 93(1) of the Act. Similarly, though a Court is competent to dismiss an election petition challenging the election of a member of the Panchayat, which does not comply with the provisions of Section 89,90 and 150, a petition filed under Sub Section 14 of Section 153 cannot be dismissed on those grounds. Section 89,90 and 150 applies only to an election petition filed as provided Chapter X of the Act. Unfortunately, eventhough first

paragraph of Ext.P2 order shows that learned Munsiff was aware of the fact that it is a petition filed under Section 153(14), Section 153 was not looked into and as a result Ext.P2 order was passed as if it was an election petition filed under Chapter X of the Act. Ext.P2 order is quashed and learned Munsiff is directed to dispose the petition, as expeditiously as possible. It is made clear that the election petition shall be disposed of in accordance with the procedure laid down in the Code of Civil Procedure while trying a suit and cannot dismissed on preliminary grounds as provided under Section 93(1) of the Act. Evenif there is any defect of non joinder, opportunity shall be given to cure the same and petition cannot be dismissed for non joinder before considering the whole evidence on merits.

It is also pointed out that election petition was originally dismissed by learned Munsiff and W.P.(c) 31678/05 was filed and this Court quashed the original order directed learned Munsiff to dispose the election petition afresh and as the petition was not being disposed, petitioner was compelled to file W.P.(c) 13304/04 for a direction to dispose the election petition without delay and this Court directed learned Munsiff to dispose the same within three months and thereafter

Ext.P2 was passed. Considering the backgrounds of the case, learned Munsiff is directed to dispose the election petition as expeditiously as possible and in any event within two months from the date of receipt of a copy of this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

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